Public Prosecutor v Abul Hassan bin Mohamed Rashid

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-09–258–10 OF 2020
KAMALUDIN MD SAID, NORDIN HASSAN AND AHMAD ZAIDI JJCA
20 JULY 2022

Constitutional Law — Courts — Jurisdiction — Whether sessions courts in Federal Territory of Kuala Lumpur had jurisdiction to hear and determine any civil or criminal cause or matter arising in any part of Peninsular Malaysia — Whether s 59(2) of SCR empowered the sessions courts in Federal Territory of Kuala Lumpur to hear and determine any cause or matter arising in any part of Peninsular Malaysia since local limits of jurisdiction had not been assigned or matter arising in any part of Peninsular Malaysia — Subordinate Courts Act 1948 (SCR), ss 59(1) and (2)

Criminal Procedure — Jurisdiction of court — Sessions court — High Court ('HC') quashed accused's conviction and sentence by Kuala Lumpur (KL) Sessions Court on ground court had no jurisdiction to try him — HC held offence with which accused was charged took place in Johor Bahru and he should have been tried by sessions court there — HC held offence did not fall within local limits of jurisdiction of KL Sessions Court — Whether since offence was committed partly in Johor Bahru and partly in KL, ss 123 and 125 of Criminal Procedure Code ('CPC') applied to give KL Sessions Court jurisdiction to hear the case — Whether HC was wrong under s 419 of CPC to set aside the conviction and sentence as accused had not suffered any miscarriage of justice from being tried and convicted in a 'wrong' court — Whether since KL Sessions Court had not been assigned local territorial limits of jurisdiction, they had jurisdiction to try any matter arising in any part of Peninsular Malaysia pursuant to s 59(2) Subordinate Courts Act 1948

The respondent was charged in the sessions court at Kuala Lumpur ('KL Sessions Court') on a principal charge of abetting another person to commit an offence under the Securities Industries Act 1983 and an alternative charge of committing criminal breach of trust under s 409 of the Penal Code. The respondent was found guilty on the alternative charge and sentenced to six years' jail. In his appeal to the High Court against the decision, the respondent raised a preliminary issue that the KL Sessions Court had no jurisdiction to try him as the offence took place in Johor Bahru. On the ground that the principal and alternative charges were interrelated and applying s 123 of the Criminal Procedure Code ('CPC'), the High Court dismissed the preliminary issue. When the hearing of the appeal on its merits came up before a different judge

('the JC'), the respondent again raised the same jurisdictional point as a preliminary issue. After hearing the parties, the JC ruled that the issue could not be re-litigated and fixed another date to hear the appeal. On that hearing date, the respondent once again raised the issue of jurisdiction, this time contending that the first High Court judge had not taken into consideration the 'Courts (Subordinate Courts) Order 1955 (LN 421 of 1955)' ('the 1955 Order') which set out the respective territorial jurisdictions of the sessions courts. After considering the submissions of the parties on the point, the JC decided that the KL Sessions Court did not have local territorial jurisdiction to hear the respondent's case as the offence was committed in Johor Bahru. The JC ruled that the respondent's trial at the KL Sessions Court was a nullity and quashed his conviction and sentence without hearing the merits of the appeal. The instant appeal was against that decision.

Held, unanimously allowing the appeal, setting aside the JC's decision and remitting the case back to the High Court for the respondent's appeal on the merits to be heard before another judge:

(1) There was nothing in the CPC which allowed a decision or ruling of a High Court judge to be reviewed or overturned by another High Court judge of co-ordinate jurisdiction. The first High Court judge had decided the issue of the jurisdiction of the KL Sessions Court and had given the reasons for his decision. Thus, it was for the Court of Appeal to determine if that decision was correct if there was an appeal. The JC's decision to overrule the first High Court judge's decision was erroneous. The JC was also wrong to have reviewed his own initial decision that the decision of the first High Court judge on the jurisdiction issue could not be re-litigated (see paras 31 & 44).

(2) Section 123 of the CPC allowed a case to be tried at a place where the act committed was an offence because of its relationship with another act which was also an offence. This provision was an exception to the local limits of jurisdiction provided under s 121 of the CPC which stated that 'Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed' (see paras 48–49).

(3) In the present case, the principal and alternative charges were inter-related. The fraudulent transaction involved the purchase of 11.1m shares of Multi-Code. The charge and the prosecution's evidence showed that RM17,552,275.20 from the uplifting of the company's fixed deposits was transferred and paid into Kenanga Investment Bank Bhd at Standard Chartered Bank Bhd ('SCB') in Kuala Lumpur. The amount was then paid to PW1 and his family members for the purchase of the shares. The purchase of the shares was completed when the payment was made and this happened in Kuala Lumpur as the monies for the payment

were deposited in SCB in Kuala Lumpur. The principal charge against the respondent was for the offence of abetting the first accused in the fraudulent transaction. The offence abetted was completed when the payment for the shares was fully made and that was in Kuala Lumpur. Apart from s 123, since the offence was committed partly in Johor Bahru and partly in Kuala Lumpur, it was a continuing one and consisted of several acts done in both the places. As such, s 125 of the CPC also applied to give the KL Sessions Court the jurisdiction to hear the case. The JC failed to consider the applicability of both ss 123 and 125 of the CPC in the instant case (see paras 50 & 52–56).

(4) Pursuant to s 419 of the CPC, no finding, sentence or order of a criminal court shall be set aside only for the reason that the proceedings took place in a wrong local area or before a wrong court unless the error caused a failure of justice. The respondent had not suffered any failure or miscarriage of justice as he was represented by counsel throughout his trial and had put up a complete defence and called his witnesses. As such, the JC should not have set aside the conviction and sentence (see paras 58 & 60).

(5) Section 59(2) of the Subordinate Courts Act 1948 ('the SCA') provided that a sessions court shall have jurisdiction to hear and determine any civil or criminal matter arising within the local limits of jurisdiction assigned to it under s 59 or 'if no such local limits have been assigned, arising in any part of Peninsular Malaysia'. In the Government *Gazette* of 17 March 2021, with regard to the constitution of the Kuala Lumpur and Labuan Sessions Courts and Magistrate's Courts, no territorial jurisdiction was assigned for the sessions courts of Kuala Lumpur and Labuan. Section 59(2) of the SCA would therefore come into play to give the KL Sessions Court jurisdiction to hear and determine any case arising in any part of Peninsular Malaysia (see paras 62–66).

(6) The JC's finding that the KL Sessions Court was assigned its local limits of jurisdiction under the 1955 Order was flawed. The 1955 Order only assigned the local limits of jurisdiction of, inter alia, the sessions courts in the State of Selangor. The Federal Territory of Kuala Lumpur was established on 1 February 1974 and it ceased to be a part of Selangor under s 3 of the Constitution (Amendment) (No 2) Act 1973 (Act A206). Since the KL Sessions Court was not assigned any local limits of jurisdiction, s 59(2) of the SCA applied to give the KL Sessions Court the jurisdiction to hear and determine the respondent's case (see paras 67–72).

[Bahasa Malaysia summary

Responden telah didakwa di Mahkamah Sesyen di Kuala Lumpur ('Mahkamah Sesyen KL') atas pertuduhan utama bersubahat dengan seorang

A yang lain dalam melakukan kesalahan di bawah Akta Perindustrian Sekuriti 1983 dan pertuduhan alternatif melakukan jenayah pecah amanah di bawah s 409 Kanun Keseksaan. Responden didapati bersalah atas pertuduhan alternatif dan dijatuhi hukuman penjara enam tahun. Dalam rayuannya kepada Mahkamah Tinggi terhadap keputusan tersebut, responden membangkitkan B isu awalan bahawa Mahkamah Sesyen KL tidak mempunyai bidang kuasa untuk membicarakannya kerana kesalahan tersebut berlaku di Johor Bahru. Atas alasan bahawa pertuduhan utama dan alternatif saling berkaitan dan menggunapakai s 123 Kanun Tatacara Jenayah ('KTJ'), Mahkamah Tinggi menolak isu awalan tersebut. Apabila pendengaran rayuan atas meritnya C didengar di hadapan hakim yang berbeza ('PK'), responden sekali lagi membangkitkan perkara bidang kuasa yang sama sebagai isu awalan. Selepas mendengar pihak-pihak, PK memutuskan bahawa isu tersebut tidak boleh dibicarakan semula dan menetapkan tarikh lain untuk mendengar rayuan tersebut. Pada tarikh perbicaraan, responden sekali lagi membangkitkan isu D bidang kuasa, kali ini menegaskan bahawa hakim Mahkamah Tinggi pertama tidak mengambil kira 'Perintah Mahkamah (Mahkamah Rendah) 1955 (LN 421 tahun 1955)' ('Perintah 1955') yang menetapkan bidang kuasa wilayah masing-masing mahkamah sesyen. Selepas mempertimbangkan hujahan pihak-pihak mengenai perkara tersebut, PK memutuskan bahawa Mahkamah E Sesyen KL tidak mempunyai bidang kuasa wilayah tempatan untuk mendengar kes responden kerana kesalahan tersebut dilakukan di Johor Bahru. PK memutuskan bahawa perbicaraan responden di Mahkamah Sesyen KL adalah terbatal dan membatalkan sabitan dan hukuman tanpa mendengar merit rayuan. Rayuan semasa adalah terhadap keputusan tersebut.

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Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan PK dan menyerahkan semula kes tersebut ke Mahkamah Tinggi untuk rayuan responden atas merit didengar di hadapan hakim lain:

G (1) Tiada apa-apa dalam KTJ yang membenarkan keputusan atau ketetapan hakim Mahkamah Tinggi disemak atau dibatalkan oleh hakim Mahkamah Tinggi lain yang mempunyai bidang kuasa selaras. Hakim Mahkamah Tinggi pertama telah memutuskan isu bidang kuasa Mahkamah Sesyen KL dan telah memberi alasan untuk keputusannya. H Oleh itu, ia adalah untuk Mahkamah Rayuan bagi menentukan sama ada keputusan tersebut betul jika terdapat rayuan. Keputusan PK untuk menolak keputusan hakim Mahkamah Tinggi pertama adalah khilaf. PK juga salah kerana telah menyemak keputusan awalnya sendiri bahawa keputusan hakim Mahkamah Tinggi pertama mengenai isu bidang kuasa I tidak boleh dibicarakan semula (lihat perenggan 31 & 44).

(2) Seksyen 123 KTJ membenarkan kes dibicarakan di tempat di mana perbuatan yang dilakukan adalah kesalahan kerana hubungannya dengan perbuatan lain yang juga merupakan kesalahan. Peruntukan ini adalah pengecualian kepada had bidang kuasa tempatan yang diperuntukkan di

bawah s 121 KTJ yang menyatakan bahawa 'Setiap kesalahan biasanya akan disoal dan dibicarakan oleh Mahkamah dalam had tempatan yang bidang kuasanya dilakukan' (lihat perenggan 48–49).

(3) Dalam kes ini, pertuduhan utama dan alternatif adalah saling berkaitan. Transaksi penipuan tersebut melibatkan pembelian 11.1 juta saham Multi-Code. Pertuduhan dan keterangan pendakwaan menunjukkan bahawa RM17,552,275.20 daripada penarikan simpanan tetap syarikat telah dipindahkan dan dibayar ke dalam Kenanga Investment Bank Bhd di Standard Chartered Bank Bhd ('SCB') di Kuala Lumpur. Jumlah itu kemudiannya dibayar kepada PW1 dan ahli keluarganya untuk pembelian saham tersebut. Pembelian saham telah selesai apabila pembayaran dibuat dan ini berlaku di Kuala Lumpur kerana wang untuk pembayaran telah didepositkan di SCB di Kuala Lumpur. Pertuduhan utama terhadap responden adalah atas kesalahan bersubahat dengan tertuduh pertama dalam transaksi penipuan tersebut. Kesalahan bersubahat telah selesai apabila pembayaran saham telah dibuat sepenuhnya dan ianya adalah di Kuala Lumpur. Selain daripada s 123, memandangkan kesalahan itu dilakukan sebahagiannya di Johor Bahru dan sebahagian lagi di Kuala Lumpur, ia merupakan kesalahan yang berterusan dan terdiri daripada beberapa perbuatan yang dilakukan di kedua-dua tempat itu. Oleh itu, s 125 KTJ juga terpakai untuk memberi Mahkamah Sesyen KL bidang kuasa untuk mendengar kes tersebut. PK gagal mempertimbangkan kebolehgunaan kedua-dua ss 123 dan 125 KTJ dalam kes semasa (lihat perenggan 50 & 52–56).

(4) Menurut s 419 KTJ, tiada dapatan, hukuman atau perintah mahkamah jenayah boleh diketepikan hanya atas sebab prosiding tersebut berlaku di kawasan tempatan yang salah atau di hadapan mahkamah yang salah melainkan kesilapan tersebut menyebabkan kegagalan keadilan. Responden tidak mengalami sebarang kegagalan atau salah laku keadilan kerana beliau diwakili peguam sepanjang perbicaraannya dan telah mengemukakan pembelaan lengkap dan memanggil saksinya. Oleh yang demikian, PK tidak sepatutnya mengenepikan sabitan dan hukuman (lihat perenggan 58 & 60).

(5) Seksyen 59(2) Akta Mahkamah Rendah 1948 ('AMR') memperuntukkan bahawa mahkamah sesyen hendaklah mempunyai bidang kuasa untuk mendengar dan menentukan apa-apa perkara sivil atau jenayah yang berbangkit dalam had bidang kuasa tempatan yang diberikan kepadanya di bawah s 59 atau 'jika tiada had tempatan sedemikian telah ditetapkan, timbul di mana-mana bahagian Semenanjung Malaysia'. Dalam Warta Kerajaan 17 Mac 2021, berkenaan dengan perlembagaan mahkamah sesyen Kuala Lumpur dan Labuan dan mahkamah majistret, tiada bidang kuasa wilayah diberikan untuk Mahkamah Sesyen Kuala Lumpur dan Labuan. Seksyen 59(2)

AMR akan memainkan peranan untuk memberi bidang kuasa Mahkamah Sesyen KL untuk mendengar dan menentukan sebarang kes yang berbangkit di mana-mana bahagian Semenanjung Malaysia (lihat perenggan 62–66).

(6) Dapatan PK bahawa Mahkamah Sesyen KL telah diberikan had bidang kuasa tempatannya di bawah Perintah 1955 adalah cacat. Perintah 1955 hanya menetapkan had bidang kuasa tempatan, antara lain, Mahkamah Sesyen di Negeri Selangor. Wilayah Persekutuan Kuala Lumpur telah ditubuhkan pada 1 Februari 1974 dan ia tidak lagi menjadi sebahagian daripada Selangor di bawah s 3 Akta Perlembagaan (Pindaan) (No 2) 1973 (Akta A206). Memandangkan Mahkamah Sesyen KL tidak diberikan sebarang had bidang kuasa tempatan, s 59(2) AMR memohon untuk memberi Mahkamah Sesyen KL bidang kuasa untuk mendengar dan menentukan kes responden (lihat perenggan 67–72).]

Cases referred to

Azmi bin Osman v PP and another appeal [2016] 3 MLJ 98, CA (refd)
Lim Hung Wang & Ors v PP [2011] 9 MLJ 752; [2011] MLJU 663; [2011] 7 CLJ 318, HC (refd)
PP v Hoo Chang Chwen [1962] 1 MLJ 284 (refd)
PP v Sihabduin bin Haji Salleh & Anor [1980] 2 MLJ 273; [1981] CLJ Rep 82, SC (refd)
Rovin Joty a/l Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and other appeals [2021] 2 MLJ 822; [2021] 4 CLJ 1, FC (refd)
Tennakoon D Harold v PP [1997] 4 MLJ 497; [1997] 1 CLJ Supp 392, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 31, 35(1)
Court Ordinance 1948
Criminal Procedure Code ss 121, 123, 125, 323, 323(1), 419
Criminal Procedure Code [IND] s 177
Federal Constitution art 1(4)
Penal Code s 409
Securities Industries Act 1983 (repealed by Capital Markets and Services Act 2007) ss 76(1), 87A(b)
Subordinate Courts Act 1948 ss 59, 59(1), (2)

Appeal from: *Abul Hasan bin Mohamed Rashid v Public Prosecutor* [2021] 9 MLJ 109 (High Court, Kuala Lumpur)

Mohd Dusuki Mokhtar (with Muhammad Azmi Mashud, Mohd Hafiz Mohd Yusof, Hashley Tajudin and Raihana Nadhira Rafidi) (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.

Muhammad Shafee (with Wan Aizuddin and Nur Syahirah Hanapiah) (Shafee & Co) for the respondent.

Nordin Hassan JCA (delivering judgment of the court):

[1] This is an appeal by the public prosecutor against the decision of the High Court dated 29 September 2020 which set aside the conviction and sentence by the Kuala Lumpur Sessions Court on the preliminary objection raised by the respondent. The respondent's preliminary objection was that the respondent was wrongly charged and tried in the Kuala Lumpur Sessions Court instead of the Johor Bahru Sessions Court which was said to have the local limits of jurisdiction to try the case.

THE BACKGROUND FACTS

[2] On 13 March 2009, Toh Chun Toh Gordon ('the first accused') and Abul Hasan bin Mohamad Rashid ('the second accused/respondent') were charged at the Sessions Court Kuala Lumpur. The principle charge against the first accused was for engaging in an act which operated as fraud on Multi-Code Industries (M) Bhd ('Multi-Code') by causing the uplifting of fixed deposits belonging to Multi-Code amounting to RM18,146,168.74, which is an offence under s 87A(b) of the Securities Industries Act 1983 ('the SIA 1983'). An alternative charge was also proffered against both the accused under s 409 of the Penal Code for criminal breach of trust, the funds of RM26,045,473.94 belonging to Multi-code.

[3] The principle charge against the respondent, translated from Bahasa Malaysia to English, reads as follows:

> That you between 26 March 2007 and 28 March 2007, at Kenaga Investment Bank Berhad (Company No. 15678-H) (formerly known as K&N Kenaga Berhad), Level 2, Menara Pelangi, Jalan Kuning, Taman Pelangi, 80400 Johor Bahru, in the State of Johor Darul Takzim, indirectly in connection with the purchase of securities namely 11.1m units of Multi-code Industries (M) Berhad shares (hereinafter referred to as 'the Shares'), *abetted Toh Chun Toh Gordon (Singapore Passport No. E0652347N) to engage in an act which operated as a fraud on Multi-code Electronics Industries (M) (Company No. 193094-K) by causing the withdrawal of fixed deposit belonging to Multi-code Electronics (M) Berhad (as per appendix 1) amounting to RM18,146,168.74, out of which RM 17,552,275.20 was transferred into the account of Kenanga Investment Bank Berhad (Company No. 15678-H), account number 0001- 312100888613 at Standard Chartered Bank Berhad, No. 2, Jalan Ampang, Kuala Lumpur, for the purchase of the shares by Ace Prelude Sdn Bhd (Company No. 734044)* through trading account no. 3AC0027 with Kenanga Investment Bank Berhad, which offence was committed as a result of your abetment and *you have thereby committed an offence under section 87A(b) read together with section 122C(c)*

of the Securities Industries Act 1983 (Act 280) and punishable under section 122C of the same Act. (Emphasis added.)

[4] The alternative charge against the respondent, translated to English, is as follows:

> That you between 26 March 2007 and 28 March 2007, at Kenaga Investment Bank Berhad (Company No. 15678-H) (formerly known as K&N Kenaga Bhd), Level 2, Menara Pelangi, Jalan Kuning, Taman Pelangi, 80400 Johor Bahru, in the State of Johor Darul Takzim, as an agent, namely a Director of Multi-code Electronics (M) Sdn Berhad and in such capacity *entrusted with the dominion with a certain property (as per appendix 2) amounting to RM 26,045,473.94 belonging to Multi-code Electronics Sdn Berhad and you have thereby committed criminal breach of trust of the said amount and as such you have committed an offence punishable under section 409 0f the Penal Code* (Act 574). (Emphasis added.)

[5] On 27 September 2010, the Kuala Lumpur Sessions Court decided that the prosecution had proved a prima facie case against both the accused on the charges proffered against them and called them to enter their defence. Having heard their defence and assessed the totality of the evidence, the sessions court judge decided that both the accused had failed to raise a reasonable doubt in the prosecution case and convicted them for the alternative charge. The first accused was then sentenced to 12 years imprisonment and a fine of RM1m, whilst the second accused, the respondent in the present appeal, was sentenced to six years imprisonment.

[6] Aggrieved by the decision, both the accused appealed against the said decision to the High Court.

[7] However, the appeal by the first accused was abated when he passed away on 27 August 2012.

[8] At the High Court, before justice Dato Indera Mohd Suffian bin Tan Sri Abd Razak, counsel for the respondent raised a preliminary issue that the Kuala Lumpur Sessions Court had no jurisdiction to hear the case as the offence occurred in Johor Bahru. The preliminary issue was heard on 11 December 2018, 22 February 2019, and 6 March 2019, and on 14 June 2019 the High Court judge dismissed the preliminary issue on jurisdiction and ordered parties to proceed with the merits of the appeal. The reason to dismiss the preliminary issue, inter alia, on the ground that the principle charge and the alternative charge were interconnected and the application of s 123 of the Criminal Procedure Code ('the CPC').

[9] The appeal to hear its merit was then transferred to another High Court before Judicial Commissioner Datuk Aslam bin Zainuddin (as he then was).

Counsel for the respondent then informed the court that they wish to submit again on the preliminary issue on jurisdiction which was objected to by the deputy public prosecutor as the matter had been decided earlier. In any event, the judge instructed parties to file a written submission addressing the issue of whether the preliminary issue which had been decided by the High Court earlier, can be relitigated again before another High Court.

[10] On 7 February 2020, the judicial commissioner decided that the preliminary issue could not be relitigated again and fixed another date to hear the merits of the appeal.

[11] On the hearing date, in the course of the hearing of the appeal on merits, the issue of local territorial jurisdiction was again raised, and the judicial commissioner then asked parties to submit the effect of the Courts (Subordinate Courts) Order 1955 (LN 421 Tahun 1955)' ('the 1955 Order'). The submission on this issue was heard by the judicial commissioner on 5 August 2020.

[12] On 29 September 2020, the judicial commissioner decided that the Kuala Lumpur Sessions Court had no local territorial jurisdiction to hear the case as the offence was committed in Johor Bahru and as such declared the trial at the Sessions Court Kuala Lumpur a nullity. The judicial commissioner then quashed the conviction and sentence against the respondent without hearing the merits of the appeal.

[13] Hence, the present appeal by the public prosecutor.

THE MAIN AND RELEVANT ISSUES FOR CONSIDERATION OF THIS COURT

[14] Having read the records of appeal and written submission and after hearing the oral submission by parties, the main issues for our determination before coming to our decision are as follows:

(a) whether the judicial commissioner of the High Court was correct in law to overturn the earlier decision of another High Court who had decided that the Kuala Lumpur Sessions Court had the jurisdiction to try the case against the respondent;

(b) whether s 123 of the CPC is applicable based on the charge and facts in this case;

(c) whether s 419 of the CPC is applicable if the case was wrongly tried in the Sessions Court Kuala Lumpur; and

(d) whether Kuala Lumpur Sessions Court was assigned with its local limits of jurisdiction.

[15] The other related issue shall be dealt with in determining the main issues mentioned above.

[16] Before we proceed to deal with the issues in the present appeal, it is helpful to lay down the established facts during the trial at the Kuala Lumpur Sessions Court. The finding of facts by the trial judge essentially, are as follows.

THE PROSECUTION'S CASE

[17] Multi-code Electronics Sdn Bhd ('Multi-code') is a public listed company since 1997. Goh Tong Huat ('PW1') has been the Managing Director of Multi-code and PW1 and his wife owned 28.4% shareholding in the company.

[18] Sometimes at the end of February or early March 2007, a meeting was held at the Zon Hotel in Johor Bahru. Present in the meeting were PW1, Nora Lam ('PW2'), Goh Kar Choon ('PW6'), Gordon Toh Chun Toh ('first accused'), Wee Chee Leong, and one Danial Wong. In the meeting, the first accused informed PW1 that he was a fund manager, had funds in Malaysia and was interested to buy PW1's shares in Multi-code. PW1 was also informed by the first accused that he will use Ace Prelude Sdn Bhd ('APSB') to buy the shares as he was also the representative of APSB.

[19] On 22 March 2007, PW1 sold his and his family members' shareholdings in Multi-code amounting to 11.1m shares to the first accused through APSB.

[20] Soon after the said shares transaction, the Multi-code's Board of Director meeting was convened wherein PW1 resigned as director of Multi-code and the first accused was appointed as a director and Chief Executive Officer of Multi-code. In the same meeting, the respondent was also appointed as a director of Multi-code. Both the first accused and the respondent were also made the authorised signatories of Multi-code accounts which include its fixed deposits account.

[21] In this Board of Directors' meeting, no approval was sought to uplift the fixed deposits nor any discussion was held on the uplifting of the fixed deposits.

[22] On 26 March 2007, PW1 handed over the Multi-code fixed deposits certificates to the first accused in the presence of the respondent, PW6 and Ang Ai Ling ('PW4'). Immediately after the handover of the certificates, the first

accused together with the respondent and Tee Keng See (PW5) went to Public Bank, RHB Bank, Maybank, Bank Rakyat, and Affin Bank where the fixed deposits were uplifted and transferred to third parties accounts.

[23] The fixed deposits in Public Bank, RHB Bank, and Bank Rakyat were uplifted and transferred to Elliot Gordon Singapore Pte Ltd ('EGS') account which was maintained at Ambank, Kuala Lumpur in the amount of RM18,146,168.74. The first accused was the solely authorised signatories of the EGS's account.

[24] The respondent as one of the authorised signatories of the Multi-code's account had signed 66 bank documents for the uplifting and transferring of the fixed deposits to the third parties accounts.

[25] On 27 March 2007, upon the instruction of the first accused, a sum of RM17,552,275.20 was transferred from the EGS's account to Kenanga Investment Bank Bhd's account at Standard Chartered, Kuala Lumpur. The transfer was made to settle the payment for the purchase of the 11.1m shares sold by PW1 and his family members.

[26] Thereafter, on 28 March 2007, the said sum of RM17,552,275.20 was paid to PW1 and his family members for the sale of the 11.1m Multi-code shares.

THE DECISION OF THE TRIAL JUDGE AT THE END OF THE PROSECUTION CASE

[27] Having analysed the evidence presented through all the prosecution's witnesses and having considered the relevant laws, at the end of the prosecution case, the trial judge found that the prosecution had proved its case against both the first accused and the respondent on the principle and alternative charges proffered against them. Hence, both of them were called to enter their defence.

THE DEFENCE

[28] Essentially, the respondent's defence can be summed up as follows. That the Board of Directors of Multi-code had approved the uplifting of the fixed deposits in the meeting on 23 March 2007, all the bank documents for the uplifting of the fixed deposits were pre-signed upon the request of one Danial Wong, and the fixed deposits were uplifted to check whether there exist any negative pledge and the respondent did not benefit from the whole transaction.

A THE DECISION OF THE TRIAL JUDGE AT THE END OF THE CASE

[29] At the end of the defence case and having considered the totality of the evidence, the trial judge found that the defence had failed to raise any reasonable doubt in the prosecution case and was satisfied that the prosecution had succeeded in proving the alternative charge for criminal breach of trust under s 409 of the Penal Code beyond a reasonable doubt against the first accused as well as the respondent. Therefore, they were convicted and sentenced accordingly on the said charge.

C THE ISSUES BEFORE THIS COURT

Whether the judicial commissioner of the High Court was correct in law to overturn the earlier decision of another High Court who had decided that the Kuala Lumpur Sessions Court had the jurisdiction to try the case against the respondent

[30] Counsel for the respondent submitted that the judicial commissioner was correct to review the decision of the earlier High Court judge on the issue of jurisdiction, based on the following grounds:

(a) the earlier High Court judge was not referred to the 1955 order which provides the local limits of the jurisdiction of the sessions court and therefore, this discovery of new fact was not known to the earlier High Court judge at the time the earlier decision was made. The decision of the High Court in the case of *Lim Hung Wang & Ors v Public Prosecutor* [2011] 9 MLJ 752; [2011] MLJU 663; [2011] 7 CLJ 318 was cited to support the contention; and

(b) the earlier High Court judge failed to take into consideration the 1948 order on the issue of local jurisdiction and as such the decision was erroneous which resulted in injustice. This 1948 order was replaced or substituted by the 1955 order.

[31] To begin with, there is nothing in the CPC which allows a decision or ruling of a High Court judge to be reviewed or overruled by another High Court judge of co-ordinate jurisdiction. In the present case, Justice Dato' Indera Mohd Suffian had decided on the issue of the jurisdiction of the Sessions Court Kuala Lumpur and had given his reason for his decision. Thus, the matter should be dealt with by the Court of Appeal to determine the correctness of the said decision should there be any appeal. The decision of the judicial commissioner to overrule the decision of Justice Dato' Indera Mohd Suffian, we find, is erroneous.

[32] This court had dealt with a similar issue in the case of *Azmi bin Osman v Public Prosecutor and another appeal* [2016] 3 MLJ 98 where Abang Iskandar

JCA (as he then was, now CJSS) addressed the issue in the following manner:

[27] *It was apparent to us from a reading of his grounds of decision that the HCJ2 had reasoned out that as his jurisdiction vis a vis the earlier HCJ1 was of coordinate jurisdiction, he was therefore not bound by the earlier decision of the HCJ1 in calling for the defence to be entered and that he could therefore review the HCJ1's decision* and determine for himself as to whether on the evidence as led by the prosecution had established a prima facie case and whether defence ought to be called. On that understanding, the HCJ2 had reviewed the evidence and concluded that the HCJ1 was wrong in calling for the accused to enter his defence on all the four charges. *His reason was because the evidence led by the prosecution did not establish a prima facie case on all the four charges for money-laundering offences.*

[28] *With respect, we are of the view that the learned HCJ2 had erred when he disturbed the findings of the earlier HCJ1 who had ordered the accused to enter on his defence to all the four charges, on appeal.* The dominant issue that ought to guide the HCJ2's mind in dealing with a situation that has now become this preliminary issue must of necessity be the fact that when the HCJ1 made that decision for defence to be called, the latter was carrying out his appellate jurisdiction. *Granted that the High Court jurisdiction is coordinate among its judges, inherent in that concept is the fact that a High Court judge cannot overrule another High Court judge who had made a decision* at some crucial stage of proceedings in the same case. In the context of this appeal before us, the HCJ1 had ordered the accused's defence to be called to answer to the four charges leveled against him. *The jurisdiction to correct that purported error, said by the HCJ2 as having been committed by the HCJ1, with respect, lies with the Court of Appeal, should there be an appeal against the decision of the HCJ2. In other words, as much as a High Court judge's decision does not bind his brother or sister judge on the High Court bench, by the same token, neither does it lie with his brother or sister judge of the High Court to overturn his decision in the same case.* In a situation now prevailing in this case, the role of the HCJ2 is only limited to see whether the defence evidence as led has succeeded in creating a reasonable doubt in the prima facie case as found by the HCJ1 on appeal by the prosecution. With respect, this must be preferred position as to what the proper approach ought to be, as was employed by the Court of Appeal in the *Sulaiman*'s case. *Coordinate jurisdiction connotes parity and as such, it does not admit nor permit mutual over-riding or over-ruling each other's decision. Only a higher appeal court can disturb or vary or affirm a High Court decision.*

[29] *In the context of the situation that arose in this case before us, it is therefore our view that the reason advanced by the learned HCJ2 that had purportedly provided him with the power to review the HCJ1 decision to call for the defence to be entered was, with respect, flawed and erroneous*. As such, on the preliminary issue raised by the learned deputy, we find that there is merit in his contention. The learned HCJ2 was wrong in reviewing and overturning the earlier decision of the HCJ1, in the first appeal by the prosecution. His role, in the circumstances, as stated above, is limited to determining whether the defence had raised a reasonable doubt at the end of the defence case. (Emphasis added.)

[33] In this regard, counsel for the respondent argued that the decision on the issue of jurisdiction by justice Dato' Indera Mohd Suffian is unappealable as it was not a decision as defined under s 3 of the Courts of Judicature Act 1964 as the rights of parties have yet to be disposed of. Here, we find the argument is misplaced as the right to appeal to the Court of Appeal is still available after the completion of the appeal on merits and the issue of jurisdiction can be made as one of the grounds of appeal.

(See *Tennakoon D Harold v Public Prosecutor* [1997] 4 MLJ 497; [1997] 1 CLJ Supp 392; *Public Prosecutor v Hoo Chang Chwen* [1962] 1 MLJ 284).

[34] In the present case, not only did the judicial commissioner overrule the decision of Justice Dato' Indera Mohd Suffian, but also reviewed his own decision that was made on 7 February 2020 which ruled that the decision by Justice Dato' Indera Mohd Suffian cannot be relitigated again and instructed parties to proceed with the merits of the appeal. Having perused the grounds of judgment of the judicial commissioner, no statutory provision was cited that empower the judicial commissioner to overrule the decision of Justice Dato' Indera Mohd Suffian but on the sole ground that the 1955 order was not brought to the attention of Justice Dato' Indera Mohd Suffian.

[35] In the grounds of judgment, the judicial commissioner said this:

> Based on the above two cases of *Lim Hung Wang & Ors v Public Prosecutor* [2011] 9 MLJ 752; [2011] 7 CLJ 318 and *Public Prosecutor v Ng Lai Huat & Others* [1990] 2 MLJ 427, I can revisit the issue. More so when the 1955 order was not brought to the attention of my learned brother judge. I cannot ignore the existence of the 1955 order, which is still in force, in coming to my decision.

[36] The two cases referred by the judicial commissioner, inter alia, involve the decision of the High Court to review its own decision. In *Lim Hung Wang*'s case, the application to review the earlier decision of the High Court in its findings on the prima facie case was dismissed. The judge endorsed the view that the power to review must be given by statute. Zawawi Salleh J (as he then was) said this:

> [32] In *KTS News Sdn Bhd v See Hua Realty Bhd & Anor* [2011] 3 CLJ 144, Low Hop Bing JCA upon deliberation on the meaning of 'review' had this to say:
>
> > [26] *In our view, the conferment of 'review jurisdiction' is not by way of inherent powers. Such review jurisdiction must be expressly provided by statute*. Authorities abound in support of this proposition. Illustrations are found in:
> >
> > (a) *Harbhajan Singh v Karam Singh* AIR (53) [1966] SC 641: At p 642 Ramaswami J held that the *court's power to review must be given by statute*.
> >
> > (b) *Drew v Willis* [1981] 1 QB 450: Lord Esher, MR pointed out that *no court*

has a power of setting aside an order which has been properly made, unless it is given by statute.

(c) *Anantharaju Shetty v Appu Hegade* AIR [1919] Mad 244. Seshagiri Aiyar, J of the Madras High Court opined:

> *It is settled law that a case is not open to appeal unless the statute gives such a right. The power to review must also be given by statute.* Prima facie a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature had indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who decided the case. There is at least good reason for saying that such power should not be exercised unless the statute gives it, ...

(d) *Trilok Singh v State Transport Authority, Bihar* AIR [1985] Patna 87: At p 88, Ashwini Kumar Sinha J said that *it is well settled that the power of review is not an inherent power but is created by statute and expressly conferred by the statute. The power of review has always been held to be a creature of statute.*

(e) *Fernandes v Ranganayakulu* AIR [1953] Mad 236: At p 237 Ramaswami J echoed the same sentiment when he said that so far as the invocation of the inherent powers of court is concerned, it has been held repeatedly and has now become *well settled law that the power to review is not an inherent power, but such a right must be conferred by statute.*

[33] One cannot help but notice that the above said authorities dealt with the finality of decision or judgment. *However, regard shall be made that if the application of review jurisdiction is strictly exercised in the case of final judgment and/or decision, what more in any finding or ruling by this court to call the applicants to enter upon their defence at the end of the prosecution case?*

[34] In spite of best efforts by learned counsel, *this court is unable to persuade itself to hold that the court has the power to review its own finding or decision* on prima facie case at the end of the prosecution case. (Emphasis added.)

[37] Reverting to the present case, the statute that cloth the High Court with the power to review is provided under s 323(1) of the CPC which provides:

> 323(1) A Judge may call for and examine the record of *any proceeding before any subordinate Criminal Court* for the purpose of satisfying himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court. (Emphasis added.)

[38] Further, the High Court is also provided the power of revision under ss 31 and 35(1) of the Courts of Judicature Act 1964 ('the CJA') which states:

> Section 31 —
>
> The High Court *may exercise powers of revision in respect of criminal proceedings*

A *and matters in subordinate courts* in accordance with any law for the time being in force relating to criminal procedure.

Section 35(1) —

B In addition to the powers conferred on the High Court by this or any other written law, the *High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts*, and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or C criminal, in any subordinate court, call for the record thereof, and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.

D **[39]** The above-mentioned statutes clearly provide that the revisionary power of the High Court conferred by s 323 of the CPC and ss 31 and 35(1) of the CJA only relates to revisionary jurisdiction over the subordinate courts. Nowhere does it mention the power to review the High Court's own decision.

E **[40]** In fact, in *Lim Hung Wang*'s case it was held that the court had no power to review its findings on a prima facie case. Further, the judge in that case was of the view that to use inherent power to allow the High Court to review its own decision would cause chaos to the administration of the criminal system and open the door to a number of applications in the course of criminal trials F which could frustrate criminal proceedings and bring proceedings at all levels of our criminal court to halt.

[41] Likewise in the present case, the effect of allowing the judicial commissioner to overrule another High Court judge's decision on the issue of G jurisdiction and reviewed its own decision to relitigate the said issue having decided earlier that the judicial commissioner had not been empowered to do so, would also create chaos to the administration of criminal system as envisaged by the learned judge in *Lim Hung Wang*'s case.

H **[42]** Further, in *Lim Hung Wang*'s case, we noted that the judge did say that if the High Court has the power to review its own decision, it must be exercised in exceptional circumstances and cannot be used to allow parties to remedy their failing and oversights during trial or backdoor method to relitigate their case. At paras 43–44 of the judgment, this was said: I

> [43] Further, learned counsel did not indicate where the court could have erred in making such finding. The burden rests upon the applicants to demonstrate the exceptional circumstances which warrant this court to review its own finding. To my mind, exceptional circumstances include:

(a) discovery of a new fact not known by the court at the time it made the original decision;

(b) *emergence of new evidence which could have a decisive factor in reaching the original decision;*

(c) a material change in circumstances since the original decision; and

(d) a reason to believe that the original decision was erroneous or constituted an abuse of power that resulted in an injustice.

[44] *The court's power to review, if any*, is not designed for the purpose of allowing parties to remedy their own failing or oversights during trial or to provide a backdoor method by which the parties can seek to reargue or relitigate their cases. (Emphasis added.)

[43] As discussed earlier, the High Court has no power to review its own decision but be that as it may, having considered the facts in the present case, it is our view that the emergence of the 1955 order brought by the judicial commissioner is not a decisive factor in the original decision by Justice Dato' Indera Mohd Suffian which ruled that the Kuala Lumpur Sessions Court had the jurisdiction to hear the case. We will elaborate further on this issue.

[44] In the circumstances, we are of the view that the judicial commissioner was wrong to overrule the decision of the earlier High Court judge on the issue of jurisdiction and further to review its own decision which was made on 7 February 2020.

[45] On this ground alone, the appeal by the public prosecutor can be determined but for the sake of completeness, we will deal with the remaining issues.

Whether s 123 of the CPC is applicable based on the charge and facts in this case

[46] In deciding whether a court has jurisdiction to hear and try a criminal case, all relevant federal laws need to be looked into and one of which is s 123 of the CPC. As emphasised by the Federal Court in *Rovin Joty a/l Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and other appeals* [2021] 2 MLJ 822; [2021] 4 CLJ 1:

[121] The court's function as a court of law is to decide cases that came before it *in accordance with the Federal Law* which is enforced at the material time. (Emphasis added.)

[47] Section 123 of the CPC provides:

When an act is an offence because of its relation to any other act which is also an offence or which would be an offence if the person was capable of committing an offence a

charge of the first-mentioned offence *may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.* (Emphasis added.)

[48] The provision of s 123 of the CPC allows a case to be tried at a place the act committed is an offence because of its relationship with another act which is also an offence. This provision can be considered an exception to the local limits of jurisdiction provided under s 121 of the CPC which states:

> Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

[49] Further illustration (a) of s 123 states:

> (a) *A charge of abetment may be inquired into or tried* either by the Court within the local limits of whose jurisdiction the *abetment was committed* or by the Court within the local limits of whose jurisdiction *the offence abetted was committed.* (Emphasis added.)

[50] In the present case, the principle charge and the alternative charge as alluded to earlier are inter-related. The fraudulent transaction involves the purchase of the 11.1m shares of Multi-code. The charge as well as the evidence presented by the prosecution shows that the amount of RM17,552,275.20 from the uplifting of Multi-code fixed deposits was transferred and paid into Kenanga Investment Bank Bhd at Standard Chartered Bank Bhd in Kuala Lumpur. This amount was then paid to PW1 and his family members for the purchase of the shares. Here, the purchase of the shares was completed when payment was made and this happened in Kuala Lumpur as the monies for the payment had been deposited in Standard Charted Bank in Kuala Lumpur. It is to be noted that the principle charge against the respondent, in this case, was for the offence of abetting the first accused in the fraudulent transaction. The offence abetted was completed when the payment of the Multi-code shares was fully made and that was in Kuala Lumpur.

[51] In addition, the word 'ordinarily' in the phrase 'be inquired into and be tried' under s 121 of the CPC which is *pari materia* with s 177 of the Indian Criminal Procedure Code has been explained in *Mallal's Criminal Procedure* (8th Ed) at p 254 as follows:

> 'Shall ordinarily be tried'
>
> [688] The term 'ordinarily' has been judicially defined to mean 'except in cases provided hereinafter to the contrary. *Thus, a Magistrate may try an offence not falling within the territorial jurisdiction of his court, if there are specific provisions allowing him to do so* ... (Emphasis added.)

[52] In the present case, s 123 of the CPC allows or confers the jurisdiction

to the Sessions Court Kuala Lumpur on the facts alluded to earlier.

[53] As such, we are of the view that s 123 of the CPC is applicable in the present case and the Kuala Lumpur Sessions Court had the jurisdiction to hear the case.

[54] Apart from s 123 of the CPC, we also find that s 125 of the same Code is also relevant in the determination of the issue of jurisdiction. Section 125 states:

> If —
>
> (a) when it is uncertain in which of several local areas an offence was committed;
>
> (b) *where an offence is committed partly in one local area and partly in another;*
>
> (c) *where an offence is a continuing one* and continues to be committed in more local areas than one; or
>
> (d) *where it consists of several acts done in different local areas,*
>
> *it may be inquired into or tried by a Court having jurisdiction over any of such local areas.*

[55] Based on the facts alluded to earlier, the offence is committed partly in Johor Bahru and partly in Kuala Lumpur, it was a continuing one and it consists of several acts done in Johor Bahru and Kuala Lumpur. As such, s 125 of the CPC is also applicable in the present case which gave the jurisdiction to the Sessions Court Kuala Lumpur to try the case.

[56] However, in the present case, the judicial commissioner had failed to consider ss 123 and 125 of the CPC which confers the jurisdiction to the Kuala Lumpur Sessions Court based on the facts presented. The judicial commissioner gave great emphasis on the local limit of jurisdiction and the 1955 order but failed to address the provisions of law that confers the jurisdiction to the court as discussed earlier. The application of the law by the judicial commissioner in the present case was erroneous.

Whether s 419 of the CPC is applicable if the case was wrongly tried in the Sessions Court Kuala Lumpur

[57] The next pertinent issue is the application of s 419 of the CPC which provides:

> *No finding, sentence or order of any criminal Court shall be set aside* merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at, passed or made, *took place in a wrong local area* or before a wrong

A Magistrate or Court, *unless it appears that such error occasioned a failure of justice.* (Emphasis added.)

[58] The provision of s 419 is plain and unambiguous that the finding, sentence, or order of a criminal court shall not be set aside only for the reason B of the wrong local area unless it causes a failure of justice. Hence, the duty of the court is to enforce this provision without giving any other interpretation.

[59] The Supreme Court in *Public Prosecutor v Sihabduin bin Haji Salleh & Anor* [1980] 2 MLJ 273; [1981] CLJ Rep 82 explained the need to enforce the C plain and clear wordings of a statute in the following manner:

> Thirdly, if the law-maker so amends the law, to paraphrase the words of Lord Diplock at p 541 in *Duport Steels Ltd v Sirs* [1980] 1 All ER 529, *the role of the judiciary is confined to ascertaining from the words that the law-maker has approved as* D *expressing its intention what that intention was, and to giving effect to it. Where the meaning of the words is plain and unambiguous it is not for Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning* because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral or to paraphrase the words of Lord Scarman at p 551 in the same case, in the field of statute law the judge must be obedient to the will of the E law- maker as expressed in its enactments, the judge has power of choice where differing constructions are possible, but he must choose the construction which in his judgment best meets the legislative purpose of the enactment. *Even if the result be unjust but inevitable, he must not deny the statute; unpalatable statute law may not be disregarded or rejected, simply because it is unpalatable; the Judge's duty is to interpret* F *and apply it.* (Emphasis added.)

[60] Reverting to the present case, the respondent was tried by a court of law in Kuala Lumpur. He was represented by counsel throughout the trial and having perused the notes of proceedings, we find that the respondent had put G up a complete defence. The prosecution had called 31 witnesses to establish its case whilst there were four witnesses for the defence which includes both the accused. In the circumstances, we find there is no failure or miscarriage of justice against the respondent. As such, the judicial commissioner was wrong in law in setting aside the conviction and sentence against the respondent on the H ground of nullity for want of local limits of jurisdiction.

Whether Kuala Lumpur Sessions Court was assigned with its local limits of jurisdiction

I **[61]** We find, that this is an important issue for determination and our findings will have consequences on the application of Practice Direction No 2 of 2008 (PD 2/2008) issued by the Chief Justice of Malaya with effect from 5 September 2008. The directive under PD 2/2008, inter alia, is that all Security Commission cases be heard and tried at the Kuala Lumpur Sessions Court.

[62] One of the provisions of law to look at in determining this issue is s 59 of the Subordinate Courts Act 1948 ('the SCA 1948') which provides:

> 59 *Constitution and territorial jurisdiction of Sessions Courts*
>
> *(1) The Yang di-Pertuan Agong* may, by order, constitute so many Sessions Courts as he may think fit and shall have power, *if he thinks fit, to assign local limits of jurisdiction thereto.*
>
> *(2) *Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section*, or, *if no such local limits have been assigned, arising in any part of Peninsular Malaysia.*
>
> (3) Each Sessions Court shall be presided over by a Sessions Court Judge appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge.
>
> (4) Sessions Courts shall ordinarily be held at such places as the Chief Judge may direct, but should necessity arise they may also be held at any other place within the limits of their jurisdiction.

[63] Section 59(1) of the SCA 1948 provides that the Yang Di-Pertuan Agong ('YDPA') by order, may constitute sessions courts and assign its local limits of jurisdiction if the YDPA thinks fit. However, if no local limits of jurisdiction have been assigned, the sessions court may hear and determine any case arising in any part of Peninsular Malaysia as stated under s 59(2) of the same Act.

[64] The next piece of document which is pertinent to this issue is the *Gazette* dated 17 March 2021. For ease of reference the *gazette* is reproduced below:

A

B

C

MALAYSIA

Warta Kerajaan

SERI PADUKA BAGINDA

DITERBITKAN DENGAN KUASA

D

HIS MAJESTY'S GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY

Jil. 65 No. 5 | 17hb Mac 2021 | *TAMBAHAN No. 36 PERUNDANGAN (A)*

E

P.U. (A) 116.

AKTA MAHKAMAH RENDAH 1948

PERINTAH MAHKAMAH RENDAH (PENUBUHAN MAHKAMAH SESYEN DAN MAHKAMAH MAJISTRET BAGI WILAYAH PERSEKUTUAN KUALA LUMPUR DAN LABUAN) 2021

F

PADA menjalankan kuasa yang diberikan oleh subseksyen 59(1) dan 76(1) Akta Mahkamah Rendah 1948 [*Akta 92*], Yang di-Pertuan Agong membuat perintah yang berikut:

G

Nama

1. Perintah ini bolehlah dinamakan **Perintah Mahkamah Rendah (Penubuhan Mahkamah Sesyen dan Mahkamah Majistret bagi Wilayah Persekutuan Kuala Lumpur dan Labuan) 2021**.

H

Penubuhan Mahkamah Sesyen

2. Mahkamah Sesyen sebagaimana yang dinyatakan dalam ruang (1) Jadual Pertama ditubuhkan berkuat kuasa mulai tarikh penubuhan sebagaimana yang dinyatakan dalam ruang (2).

I

Penubuhan Mahkamah Majistret

3. Mahkamah Majistret sebagaimana yang dinyatakan dalam ruang (1) Jadual Kedua ditubuhkan berkuat kuasa mulai tarikh penubuhan sebagaimana yang dinyatakan dalam ruang (2) dan had bidang kuasa tempatan sebagaimana yang dinyatakan dalam ruang (3).

JADUAL PERTAMA

Mahkamah Sesyen	*Tarikh Penubuhan*
(1)	(2)
Mahkamah Sesyen Kuala Lumpur	1 Februari 1974
Mahkamah Sesyen Labuan	16 April 1984

JADUAL KEDUA

Mahkamah Majistret	*Tarikh Penubuhan*	*Had Bidang Kuasa Tempatan*
(1)	(2)	(3)
Mahkamah Majistret Kuala Lumpur	1 Februari 1974	Sempadan wilayah bagi Wilayah Persekutuan Kuala Lumpur
Mahkamah Majistret Labuan	16 April 1984	Sempadan wilayah bagi Wilayah Persekutuan Labuan

Bertarikh 9 Mac 2021
[PKPMP.BD/600-2/2/20; PN(PU2)128/XV]

Dengan Titah Perintah

TAN SRI MOHD ZUKI BIN ALI
Setiausaha Jemaah Menteri

SUBORDINATE COURTS ACT 1948

SUBORDINATE COURTS (CONSTITUTION OF SESSIONS COURTS AND MAGISTRATES' COURTS FOR THE FEDERAL TERRITORIES OF KUALA LUMPUR AND LABUAN) ORDER 2021

IN exercise of the powers conferred by subsections 59(1) and 76(1) of the Subordinate Courts Act 1948 [*Act 92*], the Yang di-Pertuan Agong makes the following order:

Citation

1. This order may be cited as the **Subordinate Courts (Constitution of Sessions Courts and Magistrates' Courts for the Federal Territories of Kuala Lumpur and Labuan) Order 2021**.

Constitution of Sessions Courts

2. The Sessions Courts as specified in column (1) of the First Schedule are constituted with effect from the date of constitution as specified in column (2).

Constitution of Magistrates' Courts

3. The Magistrates' Courts as specified in column (1) of the Second Schedule are constituted with effect from the date of constitution as specified in column (2) and with the local limits of jurisdiction as specified in column (3).

FIRST SCHEDULE

Sessions Court (1)	*Date of Constitution* (2)
Sessions Court of Kuala Lumpur	1 February 1974
Sessions Court of Labuan	16 April 1984

SECOND SCHEDULE

Magistrates' Courts (1)	*Date of Constitution* (2)	*Local Limits of Jurisdiction* (3)
Magistrates' Court of Kuala Lumpur	1 February 1974	Territorial jurisdiction of the Federal Territory of Kuala Lumpur
Magistrates' Court of Labuan	16 April 1984	Territorial jurisdiction of the Federal Territory of Labuan

Dated 9 March 2021
[PKPMP.BD/600-2/2/20; PN(PU2)128/XV]

By Command

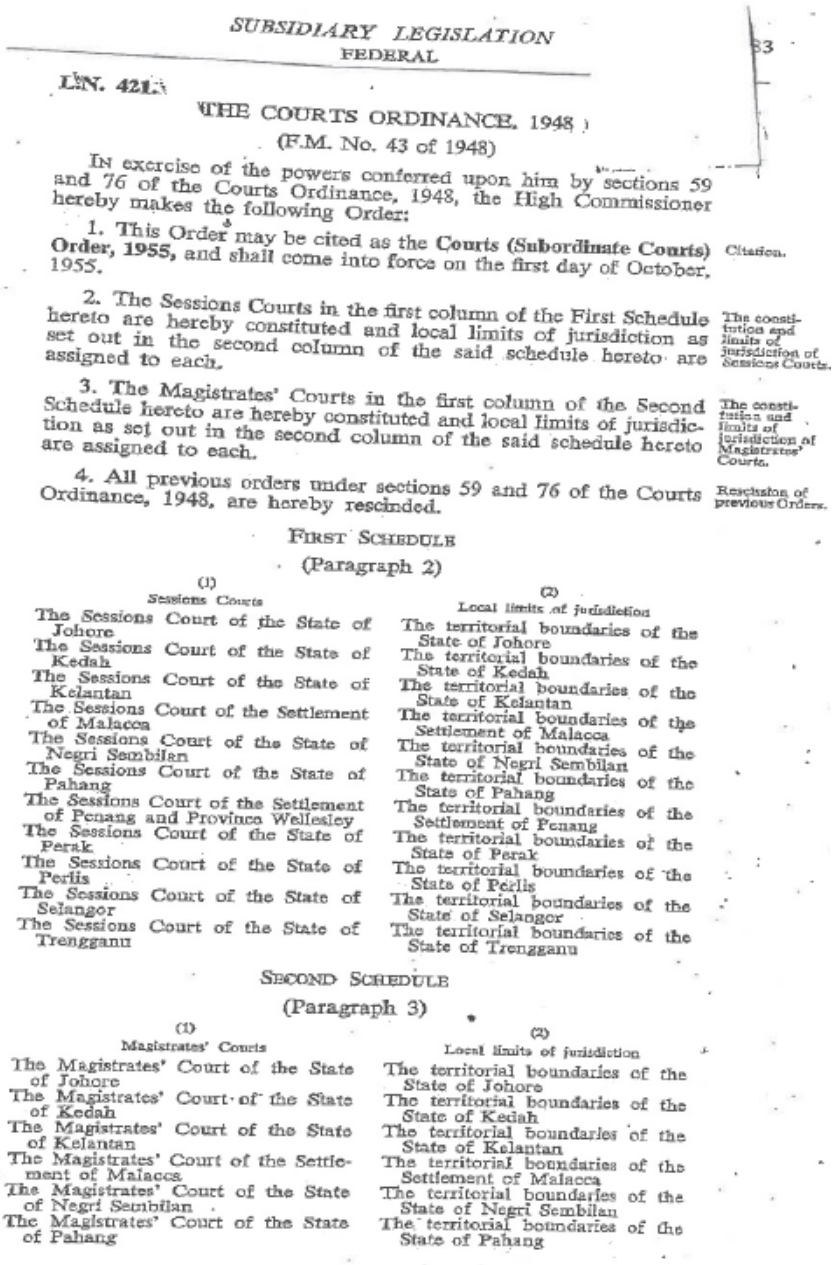
TAN SRI MOHD ZUKI BIN ALI
Secretary to the Cabinet

[65] By this *Gazette* dated 17 March 2021, the YDPA makes the order for the constitution of the Kuala Lumpur and Labuan Sessions Courts under s 59(1) of the SCA 1948 and the constitution of the Kuala Lumpur and Labuan Magistrate Courts under s 76(1) of the same act. In addition, the YDPA also makes the order assigning the territorial jurisdiction of the Magistrate Courts Kuala Lumpur and Labuan. However, no assignment was made as regards the territorial jurisdiction of the Sessions Court Kuala Lumpur and Labuan.

[66] In the circumstances, we are of the considered view that since there is no assignment of local or territorial limits of jurisdiction to the Kuala Lumpur Sessions Court, s 59(2) of the SCA 1948 comes into play, that the Kuala Lumpur Sessions Court may hear and determine any case arising in any part of Peninsular Malaysia.

[67] The reasoning of the judicial commissioner in the present case, that the Kuala Lumpur Sessions Court was assigned with its local limits of jurisdiction under the 1955 order, we find was flawed. The 1955 order only assigned the local limits of jurisdiction to the Sessions Court of the State of Selangor.

Undoubtedly, this is because the Federal Territory Kuala Lumpur and Labuan were then not in existence. For ease of reference, we reproduced the 1955 order below:



SUBSIDIARY LEGISLATION
FEDERAL

83

L.N. 421.

THE COURTS ORDINANCE, 1948

(F.M. No. 43 of 1948)

IN exercise of the powers conferred upon him by sections 59 and 76 of the Courts Ordinance, 1948, the High Commissioner hereby makes the following Order:

1. This Order may be cited as the **Courts (Subordinate Courts) Order, 1955,** and shall come into force on the first day of October, 1955. Citation.

2. The Sessions Courts in the first column of the First Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each. The constitution and limits of jurisdiction of Sessions Courts.

3. The Magistrates' Courts in the first column of the Second Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each. The constitution and limits of jurisdiction of Magistrates' Courts.

4. All previous orders under sections 59 and 76 of the Courts Ordinance, 1948, are hereby rescinded. Rescission of previous Orders.

FIRST SCHEDULE

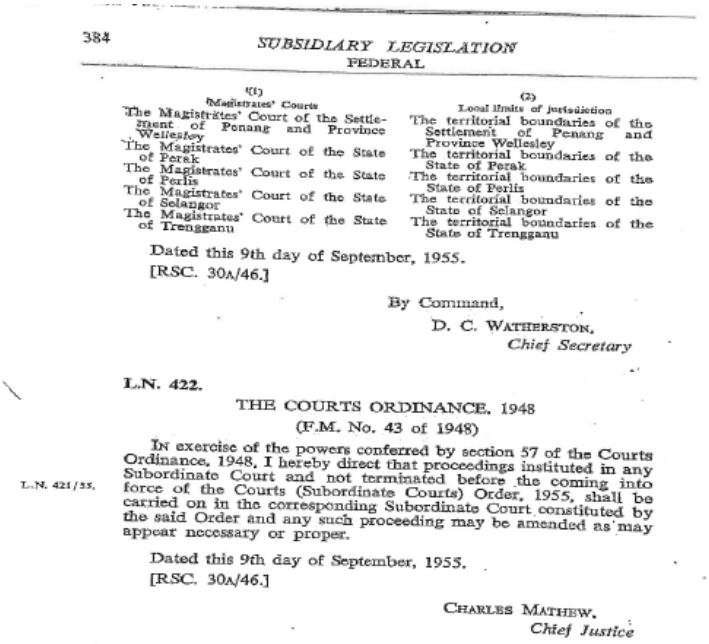
(Paragraph 2)

(1) Sessions Courts	(2) Local limits of jurisdiction
The Sessions Court of the State of Johore	The territorial boundaries of the State of Johore
The Sessions Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Sessions Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Sessions Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Sessions Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Sessions Court of the State of Pahang	The territorial boundaries of the State of Pahang
The Sessions Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang
The Sessions Court of the State of Perak	The territorial boundaries of the State of Perak
The Sessions Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Sessions Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Sessions Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

SECOND SCHEDULE

(Paragraph 3)

(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the State of Johore	The territorial boundaries of the State of Johore
The Magistrates' Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Magistrates' Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Magistrates' Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Magistrates' Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Magistrates' Court of the State of Pahang	The territorial boundaries of the State of Pahang



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FEDERAL

(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang and Province Wellesley
The Magistrates' Court of the State of Perak	The territorial boundaries of the State of Perak
The Magistrates' Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Magistrates' Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Magistrates' Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

Dated this 9th day of September, 1955.
[RSC. 30A/46.]

By Command,
D. C. WATHERSTON,
Chief Secretary

L.N. 422.

THE COURTS ORDINANCE, 1948
(F.M. No. 43 of 1948)

L.N. 421/55.

IN exercise of the powers conferred by section 57 of the Courts Ordinance, 1948, I hereby direct that proceedings instituted in any Subordinate Court and not terminated before the coming into force of the Courts (Subordinate Courts) Order, 1955, shall be carried on in the corresponding Subordinate Court constituted by the said Order and any such proceeding may be amended as may appear necessary or proper.

Dated this 9th day of September, 1955.
[RSC. 30A/46.]

CHARLES MATHEW,
Chief Justice

[68] The Federal Territory of Kuala Lumpur was established on 1 February 1974 by the Constitution (Amendment) (No 2) Act 1973 (Act A206). Section 3 of the Act provides the exclusion of the Federal Territory of Kuala Lumpur from the State of Selangor and s 4 of the same Act confers the jurisdiction over the Federal Territory to the Federation.

Section 3 states:

> *The Federal Territory shall cease to form part of the State of Selangor* and the Ruler of the State of Selangor shall relinquish and cease to exercise any sovereignty over the Federal territory and all power and jurisdiction of the Ruler and the Legislative Assembly of the State of Selangor in or in respect of the Federal territory shall come to an end.

Section 4 provides:

> The Federation shall exercise sovereignty over the Federal territory and all power and jurisdiction in or in respect of the Federal territory *shall be vested in the Federation.* (Emphasis added.)

[69] The establishment of the Federal Territory of Kuala Lumpur is also stipulated under art 1(4) of the Federal Constitution which states:

> (4) *The territory of the State of Selangor shall exclude the Federal Territory of Kuala Lumpur* established under the Constitution (Amendment) (No. 2) Act 1973 [Act A206] and the Federal Territory of Putrajaya established under the Constitution

(Amendment) Act 2001 [Act A1095] and the territory of the State of Sabah shall exclude the Federal Territory of Labuan established under the Constitution (Amendment) (No. 2) Act 1984 [Act A585], *and all such Federal Territories shall be territories of the Federation.* (Emphasis added.)

[70] Hence, the 1955 order which was made by the High Commissioner, firstly, is not an order that assigned local limits of jurisdiction to the Kuala Lumpur Sessions Court, and secondly, not the order for assignment of local or territorial jurisdiction by the YDPA as envisaged under s 59(1) of the SCA 1948.

[71] In the circumstances, the Sessions Court Kuala Lumpur which has not been assigned with any local limits of jurisdiction, may hear and try any case arising in any part of Peninsular Malaysia as empowered under s 59(2) of the SCA 1948. Likewise, in the present case, the issue of local limits of the jurisdiction of the Kuala Lumpur Sessions Court to try the respondent's case does not arise.

[72] Consequentially, as the Kuala Lumpur Sessions Court has the jurisdiction to try any case arising in any part of Peninsular Malaysia, the PD 2/2008 for Securities Commission cases in Peninsular Malaysia to be tried in the Kuala Lumpur Sessions Court is in accordance with the law. This is apart from the provisions of ss 123 and 125 of the CPC discussed earlier or any other related provisions on the jurisdiction of the courts.

CONCLUSION

[73] Based on the aforesaid reasons, it is our unanimous decision that the appeal by the public prosecutor is allowed, and the decision of the judicial commissioner is set aside. The case is sent back to the High Court to hear the appeal on its merits by another High Court judge.

Appeal allowed.

Reported by Ashok Kumar